

COOPERATIVE AGREEMENT

This agreement (hereinafter "Agreement") is made and entered into this 1st day of October, 1996 (the "Effective Date") by and between the San Bernardino Associated Governments ("SANBAG") and the City of Redlands, a municipal corporation ("City"), together which are sometimes referred to herein as the "Parties." SANBAG and City hereby agree on the following terms and conditions.

I.

DEFINITIONS

1.01 Definitions. As used in this Agreement, the following terms, phrases, words and their derivations shall have the meanings set forth herein. Words used in the present tense shall include the future tense, words used in the singular shall include the plural, and plural words shall include the singular tense. Words not specifically defined in this Agreement shall be given their common and ordinary meanings.

a. "Non-operating Property" shall mean the real property consisting of parking lots and other parking facilities as may be necessary for the operation of the Passenger Rail Station.

b. "Operating Hours" shall mean that time period commencing one (1) hour prior to the arrival of the first morning train at the Passenger Rail Terminal, and ending one (1) hour after the departure of the last evening train from the Passenger Rail Terminal.

c. "Operating Property" shall mean that real property comprising the Station Site and the railroad trackage right-of-way acquired by SANBAG.

d. "Passenger Rail Station" shall mean the Passenger Rail Terminal and all Operating

and Non-operating properties associated therewith.

e. "Passenger Rail Terminal" shall mean the platform and other improvements constructed on the Station Site for the Passenger Rail Station.

f. "Station Site" shall mean the real property upon which the Passenger Rail Terminal shall be built.

g. "Road" shall mean City's Eureka Street Widening Project as described in Exhibit "A."

II.

PURPOSE OF COOPERATIVE AGREEMENT

2.01 Design and Construction of Passenger Rail Station. The purpose of this Agreement is to facilitate the design and construction, maintenance and security for a Passenger Rail Station and construction of the Road.

III.

OWNERSHIP OF STATION SITE

3.01 Vesting of Title. Title to the Passenger Rail Terminal and Station Site shall be and remain vested in SANBAG. City and/or third parties under contract with City shall hold title to all Non-operating Property. City shall hold title to the Road.

VI.

TERM OF AGREEMENT

4.01 Term. The term of this Agreement shall commence on the Effective Date of this

Agreement, and shall continue until terminated as provided for in Article XI of this Agreement.

V.

RESPONSIBILITIES OF CITY

5.01 Planning, Zoning and Permits. City shall use its best efforts to obtain all planning, zoning and permits to secure appropriate land-use designations and approvals for the Passenger Rail Terminal and Station Site.

5.02 Reservation of Passenger Rail Parking. City shall perform appropriate planning, zoning and permit activities to ensure that parking for the Passenger Rail Station is reserved exclusively for rail commuters during Operating Hours.

5.03 Parking Fees. City may, subject to the approval of SANBAG which shall not be unreasonably withheld, charge parking fees to:

- a. Defray the costs of permits and approvals;
- b. Maintain the Passenger Rail Station and Non-operating Property; and
- c. Provide security for Passenger Rail Station patrons during Operating Hours.

All such fees collected by City shall remain the sole property of City, subject only to the limitations set forth above.

5.04 Maintenance of Station Site. City shall provide for all maintenance of the Passenger Rail Terminal and Station Site. SANBAG shall pay all of City's costs for such maintenance and shall provide utility services (ie. gas, water and electricity) for the Passenger Rail Terminal and Station Site for the initial two (2) year period following the commencement of passenger rail service from the Station Site. Upon the termination of the two-year period following commencement of

service, City shall assume full responsibility for the cost of maintaining the Passenger Rail Terminal and Station Site and shall provide utility services (ie. gas, water and electricity) to the Passenger Rail Terminal and Station Site. City's maintenance obligations under this Agreement shall not, however, extend to track maintenance. "Level of effort" and other standards to determine minimum maintenance requirements shall be developed jointly between the Parties. In the event City is unable to meet such mutually agreed "level of effort" standards, either party may terminate this Agreement in accordance with Article XI.

5.05 Security. City shall provide and SANBAG shall pay all costs for security of the Passenger Rail Terminal and Station Site for the initial two (2) year period following the commencement of passenger rail service from the Station Site. Following the termination of the initial two-year period following commencement of service, City shall assume full responsibility for the funding of security at the Passenger Rail Terminal and Station Site. "Level of effort" and other standards to determine minimum security requirements shall be developed jointly between the Parties. In the event City is unable to meet such mutually agreed "level of effort" standards, either party may terminate this Agreement in accordance with Article XI.

5.06 Road Widening. City shall be responsible for the acquisition of all real property, and shall perform engineering and design work, and conduct all necessary environmental reviews and remediation (if necessary), to widen the Road in accordance with City's approved plans and specifications for its "Eureka Street Widening" project; provided, however, that in the event eminent domain proceedings are necessary to acquire all or a portion of the property necessary for the project, City's failure to adopt any resolution of necessity will not result in a breach of this Agreement.

5.07 Provision of Parking Spaces. City shall make available for use, by persons using the

Passenger Rail Station, three hundred (300) parking spaces; two hundred (200) of which shall be located within one-quarter mile of the Passenger Rail Terminal and one hundred (100) of which shall be located within one-quarter mile of a future passenger rail terminal to serve the University of Redlands area. City shall be responsible for providing, or for ensuring the provision of, maintenance and security for the parking spaces.

5.08 Construction of Passenger Rail Station. City shall cause the construction of the Passenger Rail Station and any associated parking lot and City shall perform the construction and engineering oversight during the construction of the Passenger Rail Station and any parking lot pursuant to the plans and specifications approved pursuant to Section 6.02, below. City shall contribute the sum of five hundred thousand dollars (\$500,000) toward funding of the construction of the Passenger Rail Terminal upon commencement of such construction.

VI.

RESPONSIBILITIES OF SANBAG

6.01 Payment of Maintenance and Security Costs. SANBAG shall pay for all security costs and maintenance costs incurred by City pursuant to paragraphs 5.04 and 5.05, above, for the Passenger Rail Terminal and Station Site for two (2) years following commencement of passenger rail service from the Station Site. After the expiration of the two year period, City shall pay for all security and maintenance costs for the Passenger Rail Terminal and Station Site. "Level of effort" and other standards to determine minimum security and maintenance shall be developed jointly by the Parties.

6.02 Design and Engineering for Station Site. SANBAG shall fund the design and engineering of the Passenger Rail Terminal and Station Site and the Parties shall cause complete plans and specifications complying with all applicable federal and state laws to be prepared for the same. However, no such plans or specifications shall be executed or accepted until approved by the Parties.

6.03 Funding. SANBAG shall be responsible for funding of the construction of the Passenger Rail Terminal with the financial contribution from City made pursuant to Section 5.08, above.

6.04 Contribution of Funds. SANBAG shall pay to City the sum of one million dollars (\$1,000,000) to be used by City to defray the costs incurred by City in carrying out its "Eureka Street Widening" project. Payment of such funds shall be made to City as follows: (1) five hundred thousand dollars (\$500,000) on January 2, 1997, and (2) five hundred thousand dollars (\$500,000) on March 3, 1997. Payment to City is contingent on City's commencement of construction for its "Eureka Street Widening" project.

6.05 Assignment to the SCRRA. The Parties acknowledge and agree that at some future date, SANBAG may assign its rights, interests and obligations under this Agreement to the SCRRA.

VII.

FISCAL YEAR

7.01 Fiscal Year. The fiscal year of this Agreement shall commence on the first day of July each year.

VIII.

ACCOUNTING

8.01 Accounting. City shall submit monthly billing statements and invoices to SANBAG with regard to the activities undertaken or conducted by City pursuant to this Agreement, and City shall be paid by SANBAG within thirty (30) days from the date of invoice. City shall make its accounting books and records available to SANBAG during City's business hours, during the term of this Agreement, upon reasonable prior written notice from SANBAG.

IX.

NOTICES

9.01 Notices to Parties. Any and all notices or communications required or permitted by this Agreement or by law to be delivered to, served on, or given to either party by the other shall be in writing and shall be deemed properly delivered, served or given to the party directed to, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and addressed:

SANBAG

San Bernardino Associated Governments

475 North Arrowhead Avenue

San Bernardino, CA 92401

CITY

City of Redlands

35 Cajon Street

Redlands, CA 92373

Either party may change its mailing address for the purposes of this Agreement by giving written notice of the same in accordance with the provisions of this paragraph.

X.

MISCELLANEOUS

10.01 Consent and Agreements. Any and all consents and agreements provided for or permitted by this Agreement shall be in writing, and a signed copy thereof shall be filed and kept with this Agreement.

10.02 Entire Agreement. This instrument contains the entire agreement of the Parties as to the matters described herein and correctly sets forth the rights, duties and obligations of each party to the other as of the date of this Agreement. Any and all prior agreements, policies, negotiations and/or representations of the Parties as to the matters described herein are expressly set forth and incorporated in this Agreement.

10.03 Amendments. This Agreement shall be amended only by written instrument, executed by the Parties.

10.04 Severability. In the event any one or more provisions contained in this Agreement shall for any reason be held invalid or illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof; and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

10.05 Headings and Subtitles. Heading and subtitles of this Agreement have been used for convenience only and do not constitute matter to be considered in interpreting this Agreement.

10.06 Attorneys' fees. In the event any action is commenced to enforce or interpret the terms or conditions of this Agreement the prevailing party shall, in addition to any costs and other relief, be entitled to recover its reasonable attorneys' fees. "Prevailing party" shall be the party who obtains substantially all the relief sought by it, regardless of whether final court judgment is entered.

10.07 Indemnity. The Parties shall each defend, indemnify and hold harmless the other

party, and its elected officials, officers, employees, volunteers and authorized agents from and against any and all claims, losses, damages and causes of action (including personal injury and death) arising from or resulting in connection with the party's negligent or wrongful acts, errors or omissions in carrying out the party's duties or obligations under this Agreement and from any and all expenses incurred by the other party on account of any claim therefor.

10.08 Jurisdiction and Venue. In the event of any litigation arising out of the terms or conditions of this Agreement, the venue of any such litigation shall be the Superior Court of the State of California.

XI.

TERMINATION OF AGREEMENT

11.01 Acts Constituting Termination. This Agreement shall commence on the date of its execution and shall continue until:

- a. Voluntary or involuntary transfer or assignment by either party without the consent of the other party of any of the rights, duties or obligations set forth in this Agreement;
- b. Mutual agreement of the Parties to terminate this Agreement;
- c. Any default or breach of this Agreement by either party which has not been cured within thirty (30) days after notice of such default or breach by the other party or such later time as mutually agreed upon by the Parties as reasonable if the default or breach cannot be cured within such thirty (30) days period; or
- d. Written notice is delivered by either party to the other party ninety (90) days prior to the effective date of termination.

XII.

LICENSE

12.01 License. SANBAG hereby grants to City a license to enter upon the Station Site and perform, through its employees and/or its agents and contractors, City's construction of the Passenger Rail Terminal, and City's maintenance and security obligations for the Passenger Rail Terminal.

XIII.

ACCEPTANCE

13.01 Acceptance of Agreement. The undersigned, having read the foregoing, accept and agree to the terms and conditions set forth therein.

DATED: _____

SANBAG

By: _____

President

DATED: January 28, 1997

CITY OF REDLANDS

By: _____

Mayor

ATTEST:

By: _____

City Clerk